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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,439	01/26/2001	Richard L. Verrier	1565.0020002	4394

26111 7590 05/24/2002

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EXAMINER

LAM, ANN Y

ART UNIT	PAPER NUMBER
3763	

DATE MAILED: 05/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/769,439	VERRIER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Ann Y. Lam	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 30-41 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 30-41 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ .  
 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_ .  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30 recites the limitation "said guide catheter" in line 12. There is insufficient antecedent basis for this limitation in the claim.

Also, claim 37, recites the limitation "said guide wire". It is unclear as to which guide wire Applicant is referring.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30-36, 40 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruggio, 5,476,450. Ruggio discloses an infusion guide wire (22), see column 7, line 38, and line 55; a leading guide wire (24) having a diameter sufficiently small to be passed through a lumen of said infusion guide wire, see column 9, line 13,

said leading guide wire having a sufficient length to pass through and protrude from a distal end of said infusion guide wire, and having a distal end capable of penetrating a wall of the right atrium, see column 7, line 46, wherein said infusion guide wire and said leading guide wire both have sufficient flexibility to permit said infusion guide wire and said leading guide wire to be simultaneously passed through said guide catheter into the right atrium.

As to claim 31, said infusion wire has a diameter sufficiently small to be passed through a lumen of said guide catheter into the right atrium, see column 7, line 46.

As to claims 32 and 40, Ruggio further discloses a guide catheter (sheath assembly disclosed in column 7, line 29).

As to claim 33, said infusion guide wire has sufficient flexibility to conform at least partially to the contour of the heart, see column 7, line 46.

As to claims 34 and 36, Ruggio further discloses an aspiration catheter (66) to be passed over said infusion guide wire and into the pericardial space for the removal of fluid, see column 9, lines 42-44.

As to claims 35 and 41, said leading guide wire has sufficient flexibility to conform at least partially to the contour of the heart, see column 7, line 46.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruggio, 5,476,450.

Ruggio discloses the invention substantially as claimed, see above. However, Ruggio does not disclose that the guide wire specifically has a diameter between 0.010 inches and 0.018 inches, nor specifically 0.014 inches. Nor does Ruggio disclose that the leading guide wire protrudes approximately 2 mm from said distal end of said infusion guide wire.

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the guide wire having the dimensions as claimed, as would be necessary to advance the guidewire to the intravascular site or heart chamber under examination, as taught by Ruggio, see column 7, lines 39-41.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Y. Lam whose telephone number is (703) 306-5560. The examiner can normally be reached on T-F 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (703)308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703)306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

A.L.  
May 20, 2002

  
ANHTUAN T. NGUYEN  
PRIMARY EXAMINER

  
5/20/02